

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
Telephone Number Portability**

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CC Docket No. 95-116

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile"), by its attorneys, respectfully submits these Reply Comments in response to the Federal Communications Commission's ("Commission's") April 22, 2005 Public Notice ("Notice") in the above-captioned proceeding.¹ In this phase of this proceeding, the Commission seeks comment on its Initial Regulatory Flexibility Analysis ("IRFA") regarding the impact of its *Intermodal Order* on small entities.² The *Intermodal Order* requires porting from a wireline carrier to a wireless carrier where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.³ Application of the *Intermodal Order* to small entities has been stayed until the Commission prepares and publishes a Final Regulatory Flexibility Analysis ("FRFA").

As discussed below, T-Mobile supports the decision of the Commission in the *Intermodal Order* and the comments of CTIA, Verizon Wireless, and Sprint Nextel filed

¹ FCC 05-87, rel. Apr. 22, 2005.

² *In Re Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003) ("*Intermodal Order*"), *aff'd in part, remanded in par*, *USTA v. FCC*, 400 F. 3d 29 (D.C. Cir. 2005).

³ *Id.* at ¶ 1.

on August 19, 2005 on the IRFA. T-Mobile agrees with these commenters that the Commission's analysis in the *Intermodal Order* satisfies the substantive requirements of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 604, and thus that the Commission has adequately considered the impact of the *Intermodal Order* on small entities. None of the commenters who urge the Commission to abandon or modify its decision in the *Intermodal Order* as it applies to small entities present any valid basis to support their demands. Because the continued stay of the effectiveness of the *Intermodal Order* as it applies to small entities denies to American consumers in rural communities the full benefits of intermodal competition, the Commission should move rapidly to issue its FRFA and conclude this phase of the proceeding.

I. THE COMMISSION'S ANALYSIS IN THE *INTERMODAL ORDER* SATISFIES THE SUBSTANTIVE REQUIREMENTS OF THE RFA.

As the Notice makes clear and CTIA emphasizes in its Comments, the Commission has only one objective in this phase of the proceeding: to adopt a FRFA that demonstrates that the Commission has complied with the requirements of the RFA.⁴ The Commission must explain in the FRFA its efforts to minimize the *Order's* burdens on small entities consistent with the competitive objectives of the Communications Act of 1934, as amended (the "Act"). Contrary to the suggestion of the Montana Small Rural Independents ("MSRI"), the Commission is not required in the FRFA to "craft an alternative or exemption that will reduce or eliminate those costs" or else "the Commission's Order will again be subject to reversal and remand by the Court of Appeals pursuant to the Regulatory Flexibility Act."⁵ As CTIA notes, the RFA does not

⁴ Comments of CTIA at 3.

⁵ Comments of MSRI at 9.

permit or require the Commission to ignore the policy objectives of the applicable statute, here the number portability provisions in the Act adopted for the purpose of promoting competition with wireline carriers.⁶ If the Commission files an FRFA “demonstrating a reasonable good-faith effort to carry out RFA’s mandate,”⁷ then its obligations under the RFA are satisfied, even if it adopts rules that impose sizeable burdens on small entities.

As CTIA discusses in its Comments, it is clear from the *Intermodal Order* that the Commission has made the necessary effort to comply in good faith with the RFA. The Commission needs only at this point to adopt a FRFA that clearly explains this rationale in the format required by the RFA.⁸ In looking at the specific requirements to support intermodal porting, the Commission concluded that the wireline carriers were technically capable and ready to port numbers to wireless carriers without regard to rate centers.⁹ However, to minimize the impact on small entities, the Commission provided smaller carriers outside the top 100 MSAs additional time to prepare;¹⁰ required the rating of calls to the ported number to stay the same;¹¹ and invited smaller carriers to avail themselves of the Commission’s waiver policies.¹² The Commission considered the arguments advanced by some carriers that the porting requirements would create potentially unfair competitive advantages for wireless carriers, but concluded that these concerns did not justify denying wireless consumers the benefits of intermodal competition, since the focus of the porting rules is on promoting competition rather than on protecting

⁶ Comments of CTIA at 2.

⁷ See *US Cellular Corp. v. FCC*, 254 F.3d 78,88 (D.C. Cir. 2001).

⁸ Comments of CTIA at 10-12 (footnotes omitted).

⁹ *Intermodal Order*, *supra* note 2, at ¶ 29.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 28.

¹² *Id.* at ¶ 30.

individual competitors.¹³ As CTIA observes, “these kinds of considerations are exactly what the Commission must ‘describe’ in the final regulatory flexibility analysis. The RFA does not require anything more.”¹⁴

II. THE RECORD DEMONSTRATES THAT THERE IS NO BASIS FOR EXEMPTING ALL SMALL ILECS FROM THE STATUTORY OBLIGATION TO PROVIDE NUMBER PORTABILITY

The rural ILECs base their challenge to the IRFA and the application of the *Intermodal Order* to small entities based on the argument that small entities allegedly are technically incapable of providing intermodal number portability,¹⁵ and that the cost of implementing intermodal number portability (administrative and transport costs) is outrageously high.¹⁶ Specifically, the rural ILECs claim that the costs of requiring small entities to comply with the *Intermodal Order* do not justify the benefits to the public, because there allegedly is little to no demand for intermodal porting.¹⁷ Accordingly, they argue, the Commission has no choice but to conclude in its FRFA that small entities must be exempted from intermodal portability requirements,¹⁸ or be required to comply only when the wireless carrier has a physical point of presence in the wireline carrier’s rate

¹³ *Id.* at ¶ 27.

¹⁴ Comments of CTIA at 12.

¹⁵ Comments of National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“NTCA/OPASTCO”) at 2; Comments of MSRI at 3.

¹⁶ Comments of the Rural Iowa Independent Telephone Association (“RIITA”) at 2; Comments of Alexicon Telecommunications Consulting (“Alexicon”) at 2; Comments of Rural Carriers at 2, 6; Comments of United States Telecom Association (“USTelecom”) at 8; Comments of NTCA/OPASTCO at 2, 4; Comments of MSRI at 3; Comments of the South Dakota Telecommunications Association (“SDTA”) at 2; Comments of Montana Independent Telecommunications Systems (“MITS”) at 9; Comments of the Office of Advocacy, U.S. Small Business Administration (“Advocacy”) at 6; Comments of the Nebraska Rural Independent Companies (the “Nebraska Companies”) at 2.

¹⁷ Comments of the Nebraska Companies at 2; Comments of MITS at 5; Comments of SDTA at 6; Comments of the Missouri Small Telephone Company Group (“MoSTCG”) at 8; Comments of MSRI at 6; Comments of NTCA/OPASTCO at 13; Comments of USTelecom at 10; Comments of RIITA at 2.

¹⁸ Comments of RIITA at 5; Comments of USTelecom at 13, 15; Comments of NTCA/OPASTCO at 3, 18; Comments of MoSTCG at 13; Comments of SDTA at 1; Comments of Advocacy at 8; Comments of the Nebraska Companies at 2.

center.¹⁹ As discussed below and echoed in the comments of CTIA, Verizon Wireless, and Sprint Nextel, the Commission has fully considered and rejected these arguments, none of which provide a valid or appropriate basis for exempting small entities from complete compliance with the *Intermodal Order*.

First, it is simply not true that small entities are technically incapable of providing intermodal number portability. The Commission correctly concluded in the *Intermodal Order* that “there is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number,”²⁰ and this conclusion was not overturned on appeal. As Sprint Nextel notes in its comments, rural ILECs cannot credibly contend that intermodal porting is not technically feasible given that a growing number of rural ILECs are supporting intermodal portability today and over one million LEC customers have already ported their numbers to wireless carriers.²¹

Second, the record demonstrates that the cost of implementing intermodal number portability is far lower than the rural ILECs claim.²² As Verizon Wireless notes, many small LECs implemented number portability before the stay took effect in March 2005, yet there is no evidence that any small LEC experienced financial distress as a result of porting. The methods and procedures for intermodal porting are well-established at this point, and consultants are available to assist small carriers with number portability if need be. Moreover, if porting volumes are relatively low, as the rural ILECs predict, port

¹⁹ Comments of John Staurulakis, Inc. at 1; Comments of Advocacy at 7; Comments of NCTA/OPASTCO at 2, 3, 19; Comments of USTelecom at 11; Comments of RIITA at 4.

²⁰ *Intermodal Order*, *supra* note 2, at ¶ 23.

²¹ Comments of Sprint Nextel at 13.

²² *See, e.g.*, Comments of Verizon Wireless at 2-3.

requests can be processed manually and will not impose high personnel costs. In any event, to the extent rural ILECs incur costs to implement number portability, they can recover those costs pursuant to the explicit cost recovery mechanisms the Commission has created for exactly this purpose.

With respect to the transport costs associated with intermodal porting, wireline carriers have always had an obligation to deliver calls to wireless switches and to do so under the compensation regimes established by the Commission in other proceedings.²³ Nothing about porting changes this fact, and thus the Commission's conclusion that concerns about the costs of transporting calls to ported numbers are best handled in other ongoing interconnection proceedings is appropriate.

Finally, the evidence on the record suggests that the demand for intermodal portability is greater than the rural ILECs contend. For example, Verizon Wireless notes in its comments that during the first 15 months of intermodal number portability, it ported in over 75,000 numbers from landline customers. Most notably, Verizon Wireless experienced a steady increase in intermodal volume before the stay took effect: its intermodal small carrier volume increased 10 percent from January through March 2005 as customers became more aware of the benefits of intermodal porting.²⁴

In any event, intermodal portability has been available for a little over a year and a half whereas intramodal portability (*e.g.*, wireline portability) has been available for a little over seven years, and thus consumers are far more familiar with the concept of intramodal portability. However, consumer demand for intermodal portability should increase provided that the Commission continues to take the steps necessary to ensure

²³ See, *e.g.*, Comments of CTIA at 9.

²⁴ Comments of Verizon Wireless at 6.

that it is easy and convenient for consumers to retain their number when switching between wireline and wireless carriers. T-Mobile's experience suggests that consumers want the right to retain their number when switching between wireline and wireless carriers, and that the volume of intermodal port requests will increase over time provided that the intermodal porting process is convenient for consumers.

Under these circumstances, the Commission's conclusion that requiring rural ILECs to provide intermodal number portability is consistent with the public interest and the Commission's obligations under the Act and the RFA was appropriate. Both Congress and the Commission have recognized that number portability is essential to meaningful competition in the provision of local services.²⁵ Congress intended in the 1996 Act to give residents of rural America the same competitive choices that are available in urban areas.²⁶ Unless rural ILECs have an obligation to offer number portability, the vast majority of consumers in rural areas will continue to be denied the right to retain their telephone number while switching service providers despite the fact that all other carriers in their area offer number portability.. Therefore, it would be inappropriate and inconsistent with the Act for the Commission in its FRFA to exempt all small entities from compliance with the *Intermodal Order* or to limit application of the *Intermodal Order* in some other manner.

Furthermore, any rural ILEC that believes it is uniquely and unduly burdened by the Commission's intermodal portability requirement has other means available for obtaining relief. As the Commission noted in the IRFA, small carriers with fewer than two (2) percent of the nation's subscriber lines in the aggregate nationwide may petition a

²⁵ *In re Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8367 (1996) ("*First Report and Order*").

²⁶ See, e.g., Comments of CTIA at 4.

state commission, pursuant to Section 251(f)(2) of the Act, to suspend or modify the number portability requirements, and the state commission must grant the petition if necessary to avoid imposing an “unduly economically burdensome requirement” or as required by the public interest. Numerous petitions have been filed with state commissions since the *Intermodal Order*’s release and in many of these cases, states have granted temporary or permanent relief from number portability requirements to small carriers.²⁷ Although a number of the rural ILECs and their supporters object to the Commission’s proposed reliance on Section 251(f)(2),²⁸ other commentators confirm the Commission’s sense that this process works. As the Iowa Utilities Board (“Iowa”) stated in its comments, Section 251(f)(2) allows the state commissions to consider and apply a granular analysis to the LNP deployment issue. It enables the states to uphold the *Intermodal Order* while modifying its implementation based on specific factors in the case at hand that likely are not known to the FCC.²⁹ T-Mobile does not believe that state commissions should permit rural carriers to undermine the *Intermodal Order* by using the Section 251(f)(2) mechanism to obtain temporary or permanent relief from the obligation to offer number portability when such relief is not absolutely necessary. However, the mechanism does provide a safety valve mechanism that more than adequately addresses all the concerns raised by the rural carriers in this proceeding.

²⁷ Notice, Appendix A, ¶ 15.

²⁸ See Comments of USTelecom at 12; Comments of NTCA/OPASTCO at 15; Comments of MoSTCG at 11; Comments of SDTA at 7; Comments of Advocacy at 7; Comments of the Nebraska Companies at 7.

²⁹ Comments of Iowa at 6 (“It would have been difficult, if not impossible, for the Commission to issue a ruling such as the *Intermodal Order* that addressed the specific circumstances of so many carriers”); see also Comments of MITS at 13.

III. THE COMMISSION SHOULD MOVE QUICKLY TO ADOPT A FRFA IN THIS PROCEEDING BECAUSE CONTINUED APPLICATION OF THE STAY HARMS ALL AMERICANS IN RURAL AREAS

The Commission has repeatedly found in this and other proceedings that intermodal portability serves the public interest by fostering intermodal competition.³⁰ Because wireless-wireline competition creates incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhances flexibility for users of telecommunications services, intermodal portability benefits all consumers, including those who elect not to exercise their right to retain their telephone number when switching between wireline and wireless carriers.³¹ The continued stay of the *Intermodal Order* as applied to small entities denies the benefits of intermodal competition to American consumers in rural areas. As such, the public interest would be best served by the Commission moving rapidly to adopt a FRFA, a necessary precondition to lifting the stay.

³⁰ See, e.g., First Report and Order, *supra* note 25, at 8437; Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, and Telephone Number Portability, Memorandum Opinion and Order, 14 FCC Rcd 3092, 3112, 40 (1999); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Second Report, 12 FCC Rcd 11266, 11326 (1997).

³¹ *First Report and Order*, *supra* note 25, at 8437.

IV. CONCLUSION.

For the foregoing reasons, the Commission should proceed promptly to adopt and issue a FRFA regarding the *Intermodal Order*.

Respectfully submitted,

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